



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1 and 73**

**[AU Docket No. 15-3; DA 15-452]**

**Auction of FM Broadcast Construction Permits Scheduled for July 23, 2015; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 98**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; requirements and procedures.

**SUMMARY:** This document announces the procedures, upfront payment amounts, and minimum opening bids for the upcoming auction of certain FM broadcast construction permits. This document is intended to familiarize prospective applicants with the procedures and other requirements for participation in Auction 98, as well as provide an overview of the post-auction application and payment processes.

**DATES:** Applications to participate in Auction 98 must be filed prior to 6:00 p.m. Eastern Time (ET) on May 28, 2015. Bidding in Auction 98 is scheduled to begin on July 23, 2015.

**FOR FURTHER INFORMATION CONTACT:** Wireless Telecommunications Bureau, Auctions and

Spectrum Access Division: For legal and general auction questions: Lynne Milne or Howard Davenport at (202) 418-0660; For auction process and procedures: Jeff Crooks or Sue Sterner at (202) 418-0660.

Media Bureau, Audio Division: For licensing information, service rule and other questions: Lisa Scanlan or Tom Nessinger at (202) 418-2700. To request materials in accessible formats (Braille, large print, electronic files, or audio format) for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Auction 98 Procedures Announcement released on April 22, 2015. The complete texts of the Auction 98 Procedures

Announcement, including its attachment and related Commission documents, are available for public inspection and copying from the FCC Reference Information Center, 445 12<sup>th</sup> Street SW, Room CY-A257, Washington, DC 20554 during the regular business hours of the FCC Reference Information Center. The Auction 98 Procedures Announcement and related documents also are available on the Internet at the Commission's website: <http://wireless.fcc.gov/auctions/98/>, or by using the search function for AU Docket No. 15-3 on the Commission's Electronic Comment Filing System (ECFS) web page at <http://www.fcc.gov/cgb/ecfs/>.

## **I. GENERAL INFORMATION**

### **A. Introduction**

1. On March 16, 2015, the Wireless Telecommunications Bureau and the Media Bureau (collectively, the Bureaus) released a public notice seeking comment on specific competitive bidding procedures to be used in Auction 98. The Bureaus received comments from four individuals in response to the Auction 98 Request for Comment, 80 FR 15715, March 25, 2015.

#### **i. Construction Permits in Auction 98**

2. Auction 98 will offer 131 construction permits in the FM broadcast service, as listed in Attachment A of the Auction 98 Procedures Announcement. These construction permits are for vacant FM allotments, and are designated for use in the indicated communities.

3. Applicants may apply for any vacant FM allotment listed in Attachment A to the Auction 98 Procedures Announcement. When two or more short-form applications (FCC Form 175) are submitted specifying the same FM allotment in Auction 98, mutual exclusivity exists for auction purposes and that construction permit must be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant is qualified to bid for a particular construction permit, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application but fails to become a qualified bidder for any reason, including a failure to timely submit an upfront payment, will retain its status as an Auction 98 applicant

and will remain subject to the Commission's rules prohibiting certain communications, 47 CFR 1.2105(c) and 73.5002(d).

4. Attachment A of the Auction 98 Procedures Announcement lists the reference coordinates for each vacant FM allotment offered in this auction. An applicant for FM stations has the option to submit a set of coordinates as an alternative to the reference coordinates for the vacant FM allotment upon which they intend to bid.

**B. Rules and Disclaimers**

**i. Relevant Authority**

5. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Broadcasters should also familiarize themselves with the Commission's FM broadcast service rules contained in 47 CFR 73.201 – 73.333 and 73.1001 – 73.5009. Prospective bidders must also be familiar with the broadcast auction and competitive bidding rules contained in 47 CFR 1.2101 – 1.2112 and 73.5000 – 73.5009. All bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the Auction 98 Procedures Announcement and the public notices and orders referenced in it.

6. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auction-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>.

**ii. Prohibited Communications and Compliance with Antitrust Laws**

7. 47 CFR 1.2105(c) prohibits auction applicants for construction permits in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

**a. Entities Subject to 47 CFR 1.2105**

8. The prohibition on certain communications specified in 47 CFR 1.2105(c) will apply to any applicant that submits a short-form application seeking to participate in a Commission auction for construction permits in the same geographic license area. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii), applicants for any of the same geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. For the FM service, the geographic license area is the market designation, which is the particular vacant FM allotment (e.g., Hermitage, Arkansas, Channel 300A, MM-FM979-A). In Auction 98, this rule would apply to applicants designating any of the same FM allotments on the short-form application.

9. For purposes of this prohibition on certain communications, 47 CFR 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application. For example, where an individual served as an officer for two or more applicants, the Bureaus have found that the bids and bidding strategies of one applicant are conveyed to the other applicant, and, absent a

disclosed bidding agreement, an apparent violation of 47 CFR 1.2105(c) occurs. Individuals and entities subject to 47 CFR 1.2105(c) should take special care in circumstances where their employees may receive information directly or indirectly relating to any competing applicant's bids or bidding strategies.

10. 47 CFR 1.2105(c)(4) allows a non-controlling interest holder to obtain an interest in more than one competing applicant without violating 47 CFR 1.2105(c) provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), but that exception does not extend to a controlling interest holder.

11. Auction 98 applicants are encouraged not to use the same individual as an authorized bidder. A violation of 47 CFR 1.2105(c) could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Similarly, if the authorized bidders are different individuals employed by the same organization (e.g., law firm, engineering firm or consulting firm), a violation could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders, and that the applicant and its bidders will comply with 47 CFR 1.2105(c).

**b. Prohibition Applies Until Down Payment Deadline**

12. 47 CFR 1.2105(c)'s prohibition on certain communications begins at the short-form application filing deadline and ends at the down payment deadline after the auction closes, which will be announced in a future public notice.

**c. Prohibited Communications**

13. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction. 47 CFR 1.2105(c) prohibits not only communication about an applicant's own bids or bidding strategy, it also prohibits communication of another applicant's bids or bidding strategy. While 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate

information that affects, or could affect, bids, bidding strategy, or the negotiation of settlement agreements.

14. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations, including capital calls or requests for additional funds in support of bids or bidding strategies. An applicant also may not use the Commission's bidding system to disclose its bidding strategy. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, an applicant's statement to the press that it intends to stop bidding in the auction could give rise to a finding of a 47 CFR 1.2105(c) violation. Similarly, an applicant's public statement of intent not to participate in Auction 98 bidding could also violate the rule. Applicants are hereby placed on notice that public disclosure of information relating to bids, or bidding strategies, or to post auction market structures may violate 47 CFR 1.2105(c).

**d. Disclosure of Bidding Agreements and Arrangements**

15. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. Applicants must identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the construction permits being auctioned, including any agreements relating to post-auction market structure.

16. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiation, discussion or communication with any other applicants after the short-form application filing deadline.

17. 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants. However, certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

**e. 47 CFR 1.2105(c) Certification**

18. By electronically submitting a short-form application, each applicant in Auction 98 certifies its compliance with 47 CFR 1.2105(c) and 73.5002. In particular, an applicant must certify under penalty of perjury it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of the applicant's bids, bidding strategies, or the particular construction permits on which it will or will not bid. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

**f. Duty to Report Prohibited Communications**

19. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

20. In addition, 47 CFR 1.65 requires an applicant to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such

communication is made to or received from a party to an agreement identified under 47 CFR 1.2105(a)(2)(viii). 47 CFR 1.65(a) and 1.2105(c) require each applicant in competitive bidding proceedings to furnish additional or corrected information within five business days of a significant occurrence, or to amend its short-form application no more than five business days after the applicant becomes aware of the need for amendment.

**g. Procedure for Reporting Prohibited Communications**

21. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2), or 1.2105(c)(6) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

22. 47 CFR 1.2105(c) requires a party to file only a single report concerning a prohibited communication and to file that report with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by e-mail to Margaret W. Wiener at the following e-mail address: [auction98@fcc.gov](mailto:auction98@fcc.gov). If a party chooses instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Room 6423, Washington, DC 20554.

23. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.

**h. Winning Bidders Must Disclose Terms of Agreements**

24. Each applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement it has entered into. This



requirement applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

**i. Additional Information Concerning Rule Prohibiting Certain Communications**

25. A summary listing of documents issued by the Commission and the Bureaus addressing the application of 47 CFR 1.2105(c) may be found in Attachment E of the Auction 98 Procedures Announcement. These documents are available on the Commission's auction web page at [http://wireless.fcc.gov/auctions/prohibited\\_communications](http://wireless.fcc.gov/auctions/prohibited_communications).

**j. Antitrust Laws**

26. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws.

27. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

**iii. Due Diligence**

28. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for broadcast facilities it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a construction

permit, it will be able to build and operate facilities in accordance with the Commission's rules. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. These conditions include, but are not limited to, the condition that FCC licenses and other authorizations (whether awarded through competitive bidding or otherwise) are subject to the authority of the FCC, under the Communications Act of 1934, as amended, to modification through rulemaking and adjudicative proceedings. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.

29. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. Each potential bidder to review all underlying Commission orders, such as the specific order amending the FM Table of Allotments and allotting the FM channel(s) on which it plans to bid. An order adopted in an FM allotment rulemaking proceeding may include information unique to the allotment such as site restrictions or expense reimbursement requirements. Each potential bidder should perform technical analyses or refresh their previous analyses to assure itself that, should it become a winning bidder for any Auction 98 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. Each applicant should inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act at 47 CFR 1.1301 – 1.1319.

30. Each applicant should conduct its own research prior to Auction 98 in order to determine the existence of pending administrative or judicial proceedings, including pending allocation rulemaking proceedings, that might affect its decision to participate in the auction. Each participant in Auction 98 to continue such research throughout the auction. The due diligence considerations mentioned in the Auction 98 Procedures Announcement do not comprise an exhaustive list of steps that should be

undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

31. Pending and future judicial proceedings, as well as certain pending and future proceedings before the Commission — including applications, applications for modification, petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review — may relate to particular applicants, incumbent permittees, incumbent licensees, or the construction permits available in Auction 98. Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in this auction.

32. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 98. Each potential bidder is responsible for undertaking research to ensure that any permits won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

33. Applicants may research the Media Bureau's licensing database in order to determine which channels are already licensed to incumbent licensees or previously authorized to construction permittees. Licensing records are contained in the Consolidated Database System (CDBS) and may be researched on the Internet from <http://www.fcc.gov/encyclopedia/media-bureau-filing-systems-and-databases>.

34. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources

or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

**iv. Use of FCC Auction System**

35. Bidders will be able to participate in Auction 98 over the Internet using the Commission's web-based FCC Auction System. The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

**v. Environmental Review Requirements**

36. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a broadcast facility is a federal action, and the permittee or licensee must comply with the Commission's environmental rules at 47 CFR 1.1301 – 1.1319 for each such facility.

**C. Auction Specifics**

**i. Bidding Methodology**

37. The bidding methodology for Auction 98 will be a simultaneous multiple round format. The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

**ii. Pre-Auction Dates and Deadlines**

38. The following dates and deadlines apply: (1) the Auction Tutorial will be available (via Internet) on May 18, 2015; (2) the Short-Form Application (FCC Form 175) Filing Window opens on May 18, 2015 (12:00 noon ET); (3) the Short-Form Application (FCC Form 175) Filing Window deadline ends on May 28, 2015 (prior to 6:00 p.m. ET); (4) the Upfront Payments (via wire transfer) are due by June 29, 2015 (6:00 p.m. ET); and (5) the Mock Auction will be held on July 20, 2015.

**iii. Requirements for Participation**

39. Those wishing to participate in this auction must: (1) Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, on May 28, 2015, following the electronic filing procedures set forth in Attachment B to the Auction 98 Procedures Announcement; (2) Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, on June 29, 2015, following the procedures and instructions set forth in Attachment C to the Auctions 98 Procedures Announcement; and (3) Comply with all provisions outlined in the Auction 98 Procedures Announcement and applicable Commission rules.

**II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS**

**A. General Information Regarding Short-Form Applications**

40. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, parties desiring to participate in the auction must file a streamlined, short-form application in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicant's short-form application and certifications, and on its upfront payment. In the second phase of the process, each winning bidder must file a more comprehensive long-form application.

41. Every entity and individual seeking a construction permit available in Auction 98 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on May 28, 2015, following the procedures prescribed in Attachment B of the Auction 98 Procedures Announcement. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's rules against prohibited communications beginning at the deadline for filing.

42. Every applicant bears full responsibility for submitting an accurate, complete and timely short-form application. An applicant must certify on its short-form application under penalty of perjury that it is legally, technically, financially and otherwise qualified to hold a license. Each applicant should read carefully the instructions set forth in Attachment B of the Auction 98 Procedures Announcement and should consult the Commission's rules to ensure that all the information required is included within its short-form application.

43. An individual or entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may be accepted for filing.

44. Submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

**B. Permit Selection**

45. An applicant must select the construction permits on which it wants to bid from the Eligible Permits list on its short-form application. To assist in identifying construction permits of interest that will be available in Auction 98, the FCC Auction System includes a filtering mechanism that allows an applicant to filter the Eligible Permits list. Selections for one or more of the filter criteria can be made and the system will produce a list of construction permits satisfying the specified criteria. Any or all of the construction permits in the filtered results may be selected. Applicants will also be able to select construction permits from one set of filtered results and then filter on different criteria to select additional construction permits.

46. Applicants interested in participating in Auction 98 must have selected construction permit(s) available in this auction by the short-form application filing deadline. Applicants must review and verify their construction permit selections before the deadline for submitting short-form applications. Construction permit selections cannot be changed after the short-form application filing deadline. The FCC Auction System will not accept bids on construction permits that were not selected on the applicant's short-form application.

**C. New Entrant Bidding Credit**

47. The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications are considered when determining an applicant's eligibility for the New Entrant Bidding Credit. In Auction 98, the applicant's attributable interests and, thus, its maximum new entrant bidding credit eligibility are determined as of the short-form application filing deadline. An applicant intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline. Each applicant is reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of

attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately (no less than five business days after the event occurs). In this context, each applicant has a duty to continuously maintain the accuracy of information submitted in its auction application. Moreover, an applicant cannot qualify for a bidding credit, or upgrade a previously-claimed bidding credit, based on an ownership or positional change occurring after the short-form application filing deadline.

48. Under traditional broadcast attribution rules, including 47 CFR 73.3555 Note 2, those entities or individuals with an attributable interest in a bidder include: (1) All officers and directors of a corporate bidder; (2) Any owner of 5 percent or more of the voting stock of a corporate bidder; (3) All partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and (4) All members of a limited liability company, unless sufficiently insulated.

49. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the bidder. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant.

50. In the New Entrant Bidding Credit Reconsideration Order, 64 FR 44856, Aug. 18, 1999, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that applicant for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.

51. In the Diversity Order, 73 FR 28400, May 16, 2008, the Commission relaxed the equity/debt plus (EDP) attribution standard, to allow for higher investment opportunities in entities meeting the definition of eligible entities, 47 CFR 73.3555 Note 2(i). Consistent with a 2011 court



decision, the relaxed equity and/or debt plus attribution standard for eligible entities as the basis for the New Entrant Bidding Credit will be unavailable in Auction 98.

52. A medium of mass communications is defined in 47 CFR 73.5008(b). Full power noncommercial educational stations, on both reserved and non-reserved channels, are included among media of mass communications as defined in 47 CFR 73.5008(b). Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the applicant's other mass media interests in determining its eligibility for a New Entrant Bidding Credit. Further, any bidder asserting eligibility for new entrant bidding credit must have de facto as well as de jure control of the entity claiming the bidding credit.

#### **D. Application Requirements**

53. In addition to the ownership information required pursuant to 47 CFR 1.2105 and 1.2112, an applicant seeking a New Entrant Bidding Credit is required to establish on its short-form application that it satisfies the eligibility requirements to qualify for the bidding credit. In such case, a certification under penalty of perjury must be provided in completing the short-form application. An applicant claiming that it qualifies for a 35 percent New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent New Entrant Bidding Credit must certify that neither it nor any of its attributable interest holders has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

**i. Bidding Credits**

54. Applicants that qualify for the New Entrant Bidding Credit, as specified in 47 CFR 73.5007, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders. A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008. A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008. No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the broadcast permit proposed in the auction, as defined in 47 CFR 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities. For purposes of determining whether a broadcast permit offered in this auction is in the same area as an applicant's existing mass media facilities, the coverage area of the to-be-auctioned facility is calculated using maximum class facilities at the allotment reference coordinates, not any applicant-specified preferred site coordinates.

55. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and note 2 of that section. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

**E. Ownership Disclosure Requirements**

56. For purposes of determining eligibility to participate in a broadcast auction, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by

47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party- or parties-in-interest and ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more. The ownership disclosure standards for the short-form application are prescribed in 47 CFR 1.2105 and 1.2112. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

57. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an FCC Form 602 or in an FCC Form 175 filed for a previous auction using the FCC Auction System), will automatically be entered into its short-form application. Each applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Any information that needs to be corrected or updated must be changed directly in the short-form application.

#### **F. Provisions Regarding Former and Current Defaulters**

58. Current defaulters or delinquents are not eligible to participate in Auction 98, but former defaulters or delinquents can participate so long as they are otherwise qualified and make upfront payments that are fifty percent more than would otherwise be necessary. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a former defaulter or a former delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

59. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110, are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. Submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

60. Applicants are encouraged to review the Bureaus' previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Failure to comply, however, with the terms of a demand letter in the time period specified may render the subject debt delinquent, notwithstanding rules generally permitting late payment. Parties are encouraged to consult with the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

61. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement its obligations under the Debt Collection Improvement Act of 1996,

which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

62. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current red light status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

63. Moreover, prospective applicants in Auction 98 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Further, an applicant that has its long-form application dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

#### **G. Optional Applicant Status Identification**

64. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), and rural telephone companies, as defined in 47 CFR 1.2110(c)(4), may identify themselves regarding this status in filling out their short-form applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of designated entities in its auctions.

## **H. Noncommercial Educational Status Election**

65. If an FCC Form 175 filed during the Auction 98 filing window identifying the application's proposed station as noncommercial educational (NCE) is mutually exclusive with any application filed during that window for a commercial station, the NCE application will be returned as unacceptable for filing. Auction applications selecting the same FM station construction permit are considered mutually exclusive. Each prospective applicant in this auction should consider carefully if it wishes to propose NCE operation for any FM station acquired in this auction. This NCE election cannot be reversed after the initial application filing deadline.

## **I. Minor Modifications to Short-Form Applications**

66. After the deadline for filing initial applications, an Auction 98 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. An applicant is not permitted to make a major modification to its application (e.g., change of construction permit selection, change control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit, or change the identification of the application's proposed facilities as noncommercial educational) after the initial application filing deadline. Thus, any change in control of an applicant, resulting from a merger, for example, will be considered a major modification, and the application will consequently be dismissed. If an applicant's short-form application is dismissed, the applicant would remain subject to the communication prohibitions of 47 CFR 1.2105(c) until the down payment deadline, which will be established after the auction closes.

67. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. For the change to be submitted and considered by the Commission, be sure to click

on the SUBMIT button. After the revised application has been submitted, a confirmation page will be displayed stating the submission time, submission date, and a unique file number.

68. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes (e.g., changing certain contact information or the name of an authorized bidder). If these or other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the FCC Auction System once it is available. Moreover, after the filing window has closed, the system will not permit applicants to make certain changes, such as the applicant's legal classification and the identification of the application's proposed facilities as noncommercial educational.

69. Any letter describing changes to an applicant's short-form application must be submitted by e-mail to [auction98@fcc.gov](mailto:auction98@fcc.gov). The e-mail summarizing the changes must include a subject or caption referring to Auction 98 and the name of the applicant, for example, Re: Changes to Auction 98 Short-Form Application of ABC Corp. The Bureaus request that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

70. Any application amendment and related statements of fact must be certified by an authorized representative of the applicant having authority to bind the applicant.

71. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System, which was used for submitting comments regarding Auction 98.

#### **J. Maintaining Current Information in Short-Form Applications**

72. 47 CFR 1.65 and 1.2105(b) require an applicant to maintain the accuracy and completeness of information furnished in its pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within five business days of a significant occurrence, or to amend a short-form application no more than five business days after the applicant

becomes aware of the need for the amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs. If an amendment reporting changes is a major amendment, as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the application. For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the applicant's amendment. After the short-form filing deadline, applicants may make only minor changes to their applications. For changes to be submitted and considered by the Commission, be sure to click on the SUBMIT button in the FCC Auction System. In addition, an applicant cannot update its short-form application using the FCC Auction System after the initial and resubmission filing windows close. If information needs to be submitted pursuant to 47 CFR 1.65 after these windows close, a letter briefly summarizing the changes must be submitted by e-mail to [auction98@fcc.gov](mailto:auction98@fcc.gov). This e-mail must include a subject or caption referring to Auction 98 and the name of the applicant. The Bureaus request that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

### **III. PRE-AUCTION PROCEDURES**

#### **A. Online Auction Tutorial – Available May 18, 2015**

73. By Monday, May 18, 2015, an interactive auction tutorial will be available on the Auction 98 web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and broadcast services rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

74. The auction tutorial will be accessible through a web browser with Adobe Flash Player from the FCC's Auction 98 web page at <http://wireless.fcc.gov/auctions/98/> through an Auction Tutorial



link. Once posted, this tutorial will remain available and accessible anytime for reference in connection with the procedures outlined in the [Auction 98 Procedures Announcement](#).

**B. Short-Form Applications – Due Prior to 6:00 p.m. ET on May 28, 2015**

75. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment B to the [Auction 98 Procedures Announcement](#) to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This short-form application must be submitted prior to 6:00 p.m. ET on May 28, 2015. Late applications will not be accepted. No application fee is required, but an applicant must submit a timely and sufficient upfront payment to be eligible to bid.

76. Applications may generally be filed at any time beginning at noon ET on May 18, 2015, until the filing window closes at 6:00 p.m. ET on May 28, 2015. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applications can be updated or amended multiple times until the filing deadline on May 28, 2015.

77. An applicant must always click on the SUBMIT button on the Certify & Submit screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment B to the [Auction 98 Procedures Announcement](#). FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

**C. Application Processing and Minor Corrections**

78. After the deadline for filing FCC Form 175 applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those that are complete; (2) those that are rejected; and (3) those that are incomplete

or deficient because of minor defects that may be corrected. That public notice will include the deadline for resubmitting corrected applications.

79. Non-mutually exclusive applications will be listed in a subsequent public notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in that public notice. All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive applications proposing commercial stations will proceed to auction.

80. After the application filing deadline on May 28, 2015, applicants can make only minor corrections to their applications. They will not be permitted to make major modifications (e.g., change construction permit selection, change control of the applicant, change the certifying official, claim eligibility for a higher percentage of bidding credit, or change identification of the application's proposed facilities as NCE).

81. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by e-mail to [auction98@fcc.gov](mailto:auction98@fcc.gov).

**D. Upfront Payments – Due June 29, 2015**

82. In order to be eligible to bid in this auction, an upfront payment must be submitted and accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in the [Auction 98 Procedures Announcement](#) and must be received in the proper account at U.S. Bank before 6:00 p.m. ET on June 29, 2015.

**i. Making Upfront Payments by Wire Transfer**

83. An applicant must initiate its wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the Commission's auction payment lockbox bank, the U.S. Bank in St. Louis, Missouri. Wire transfer payments must be received before 6:00 p.m. ET on June 29, 2015. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

84. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418-4232. On the fax cover sheet, write Wire Transfer – Auction Payment for Auction 98. In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 98 before the deadline.

85. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159). An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. To receive confirmation from Commission staff, contact Gail Glasser of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418-0578, or alternatively, Theresa Meeks at (202) 418-2945.

86. All payments must be made in U.S. dollars. All payments must be made by wire transfer. Upfront payments for Auction 98 go to a lockbox number different from the lockboxes used in previous FCC auctions. Failure to deliver a sufficient upfront payment as instructed in the Auction 98 Procedures Announcement by the deadline on June 29, 2015 will result in dismissal of the short-form application and disqualification from participation in the auction. Any applicant that submits a short-form application but fails to timely submit an upfront payment will retain its status as an Auction 98 applicant and will remain subject to 47 CFR 12105(c) and 73.5002(d), but, having purchased no bidding eligibility, will not be eligible to bid.

**ii. FCC Form 159**

87. An accurate and complete FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C of the Auction 98 Procedures Announcement. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but it must be filed with U.S. Bank by fax.

**iii. Upfront Payments and Bidding Eligibility**

88. An applicant must make an upfront payment sufficient to obtain bidding eligibility on the construction permits on which it will bid. The amount of the upfront payment will determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In order to bid on a particular construction permit, a qualified bidder must have selected the construction permit on its FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected

on its FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to place bids and hold provisionally winning bids in any given round. (A provisionally winning bid is a bid that would become a final winning bid if the auction were to close after a specific round.) The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

89. The specific upfront payment amounts and bidding units for each construction permit in Auction 98 are set forth in Attachment A of the Auction 98 Procedures Announcement.

90. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

91. 47 CFR 1.2106(a) requires that an applicant that is a former defaulter must submit an upfront payment 50 percent greater than other applicants. For purposes of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, the applicant will not be

eligible to participate in bidding. This applicant will retain its status as an applicant in Auction 98 and will remain subject to 47 CFR 1.2105(c) and 73.5002(d).

**E. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments**

92. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information specified in the Auction 98 Procedures Announcement be submitted. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.) Instructions for submission of refund wire transfer information by fax were provided in the Auction 98 Procedures Announcement. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise.

**F. Auction Registration**

93. Approximately ten days before the auction, the Bureaus will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely-filed, accurate, and complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

94. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the FCC Auction System Bidder's Guide, and the Auction Bidder Line telephone number.

95. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Thursday, July 16, 2015, a qualified bidder

must call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration materials.

96. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

#### **G. Remote Electronic Bidding**

97. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference — electronic or telephonic — on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the FCC Auction System Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 98.

#### **H. Mock Auction – July 20, 2015**

98. All qualified bidders will be eligible to participate in a mock auction on Monday, July 20, 2015. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. The Bureaus strongly recommend that all bidders participate in the mock auction. Details will be announced by public notice.

#### **IV. AUCTION**

99. The first round of bidding for Auction 98 will begin on Thursday, July 23, 2015. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

##### **A. Auction Structure**

###### **i. Simultaneous Multiple Round Auction**

100. In Auction 98, all construction permits will be auctioned in a single auction using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

###### **ii. Eligibility and Activity Rules**

101. The Bureaus will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 98. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each construction permit is assigned a specific number of bidding units as listed in Attachment A to the Auction 98 Procedures Announcement. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding



units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits it selected on its short-form application. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

102. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. A bidder's activity level in a round is the sum of the bidding units associated with construction permits covered by the bidder's new and provisionally winning bids from the previous round.

103. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

### **iii. Auction Stages**

104. In Auction 98, a bidder desiring to maintain its current bidding eligibility will be required to be active on construction permits representing at least 80 percent of its current eligibility, during each round of Stage One, and at least 95 percent of its current bidding eligibility on Stage Two.

105. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by five-fourths ( $5/4$ ). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths ( $20/19$ ).

**CAUTION:** Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging into the FCC Auction System.

106. When the Bureaus move the auction from Stage One to Stage Two, they will first alert bidders by announcement in the bidding system. The stage of the auction does not affect the auction stopping rules; the auction may conclude in Stage One. The Bureaus have the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant.

#### **iv. Stage Transitions**

107. Auction 98 will start in Stage One. The Bureaus will regulate the pace of the auction by announcement. The Bureaus retain the discretion to transition the auction to Stage Two, to add an additional stage with a higher activity requirement, not to transition to Stage Two, and to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of construction permits (as measured in bidding units) on which there are new bids.

#### **v. Activity Rule Waivers**

108. Each qualified bidder in the auction will be provided with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Waivers can be either proactive or automatic and are principally a

mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

109. The FCC Auction System assumes that a bidder with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If no waivers remain and the activity requirement is not satisfied, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the ability to place additional bids in the auction.

110. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

111. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a proactive waiver is applied (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are placed, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. Applying a waiver is irreversible; once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.

**vi. Auction Stopping Rules**

112. For Auction 98, the Bureaus will employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops simultaneously on every construction permit. More specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bids or applies a proactive waiver.

113. The Bureaus also adopted alternative versions of the simultaneous stopping rule for Auction 98. **Option 1:** The auction would close for all construction permits after the first round in which no bidder applies a proactive waiver or places any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. **Option 2:** The auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bids on any construction permit that is not FCC held. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit that does not already have a provisionally winning bid (an FCC-held construction permit) would not keep the auction open under this modified stopping rule. **Option 3:** The auction would close using a modified version of the simultaneous stopping rule that combines options 1 and 2 above. **Option 4:** The auction would end after a specified number of additional rounds. If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s), after which the auction will close. **Option 5:** The auction would remain open even if no bidder places any new bids or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

114. The Bureaus proposed to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureaus are likely to attempt to change the pace of the

auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureaus retained the discretion to exercise any of these options with or without prior announcement during the auction.

**vii. Auction Delay, Suspension, or Cancellation**

115. By public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus will exercise this authority solely at its discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

**B. Bidding Procedures**

**i. Round Structure**

116. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day.

117. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

**ii. Reserve Price and Minimum Opening Bids**

118. The Bureaus did not establish reserve prices for the construction permits in Auction 98. The Bureaus did, however, establish minimum opening bids for each construction permit in this auction. After further consideration, the Bureaus adjusted the minimum opening bid amount for one construction

permit, MM-FM1076-A, at Maysville, Georgia, in response to concerns raised by a commenter. The Bureaus made corresponding changes to the upfront payment amount and the bidding units associated with this construction permit. The specific minimum opening bid amount for each construction permit available in Auction 98 is specified in Attachment A of the Auction 98 Procedures Announcement.

### **iii. Bid Amounts**

119. In each round of Auction 98, an eligible bidder will be able to place a bid on a given construction permit in any of up to nine different amounts, if the bidder has sufficient eligibility to place a bid on the particular construction permit. The FCC Auction System interface will list the nine acceptable bid amounts for each construction permit. In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer acceptable bid amounts for that permit.

120. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a permit, the minimum acceptable bid amount will be a certain percentage higher. That is, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. Bureaus will begin the auction with a minimum acceptable bid percentage of 10 percent. Thus, the minimum acceptable bid amount will equal (provisionally winning bid amount) \* (1.10), rounded.

121. The eight additional bid amounts will be calculated using the minimum acceptable bid amount and a bid increment percentage, which will be 5 percent for the beginning of Auction 98. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. For Auction 98, the calculation is (minimum acceptable bid amount) \* (1 + 0.05), rounded, or (minimum acceptable bid amount) \* 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.10, rounded; the third additional

acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.15, rounded; etc. The Bureaus will round the results of these calculations using the standard rounding procedures for auctions. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a \$10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is \$12,000 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$10,000 above the provisionally winning bid. If the Bureaus exercise this discretion to retain the discretion to change bid amounts if they determine that circumstances so dictate, it will alert bidders by announcement in the FCC Auction System during the auction.

#### **iv. Provisionally Winning Bids**

122. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Provisionally winning bids count toward activity for purposes of the activity rule.

123. The Bureaus will use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round

(i.e., tied bids). Specifically, the FCC Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

**v. Bidding**

124. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 98. Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders must allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

125. A bidder's ability to bid on specific construction permits is determined by two factors: (1) the construction permits selected on the bidder's FCC Form 175 and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those construction permits the bidder selected on its FCC Form 175.

126. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

127. In each round, an eligible bidder will be able to place bids on a given construction permit in any of up to nine pre-defined bid amounts if the bidder has sufficient eligibility to place a bid on the particular construction permit. For each construction permit, the FCC Auction System will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows text files containing bid information to be uploaded.



128. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that permit will be equal to its minimum opening bid amount. Once there are bids on a permit, minimum acceptable bids for the following round will be determined.

129. During a round, an eligible bidder may submit bids for as many construction permits as it wishes (providing that it is eligible to bid on the specific permits), remove bids placed in the current bidding round, or permanently reduce eligibility. If multiple bids are submitted for the same construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidding units associated with construction permits for which the bidder has removed bids do not count towards current activity.

**vi. Bid Removal and Bid Withdrawal**

130. In Auction 98, each bidder will have the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By using the remove bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

131. In Auction 98, the Bureaus will prohibit bidders from withdrawing any bids after the round in which the bids were placed has closed. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed, even if a bid was mistakenly or erroneously made.

**vii. Round Results**

132. Reports reflecting bidders' identities for Auction 98 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

133. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, current provisionally winning

bids, new minimum acceptable bid amounts for the following round, whether the construction permit is FCC held, and bidder eligibility status (bidding eligibility and activity rule waivers), and will post the reports for public access.

**viii. Auction Announcements**

134. The Commission will use auction announcements to report necessary information such as schedule changes. All auction announcements will be available by clicking a link in the FCC Auction System.

**V. POST-AUCTION PROCEDURES**

135. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and the long-form applications (FCC Forms 301).

**A. Down Payments**

136. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 98 to twenty percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

**B. Final Payments**

137. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments.

**C. Long-Form Application (FCC Form 301)**

138. The Commission's rules currently provide that within thirty days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice, winning bidders must electronically submit a properly-completed long-form application (FCC Form 301, Application for Construction Permit for Commercial Broadcast Station), and required exhibits for each construction permit won through Auction 98. Winning bidders claiming new entrant status must include

an exhibit demonstrating their eligibility for the bidding credit. 47 CFR 1.2107(c) requires that a winning bidder for a commercial broadcast station submit an application filing fee with its post-auction long-form application. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

#### **D. Default and Disqualification**

139. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). This default payment consists of a deficiency payment, equal to the difference between the amount of the Auction 98 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same allotment is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. The percentage of the applicable bid to be assessed as an additional payment for defaults in Auction 98 was established at twenty percent of the applicable bid.

140. Finally, in the event of a default, the Commission has the discretion to re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

## **VI. PROCEDURAL MATTERS**

141. **Paperwork Reduction Act Analysis.** This document contains no new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. Therefore, it does not contain any new or modified information collection burden for small business

concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4).

142. **Congressional Review Act.** Consistent with the requirements of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), the Commission will send a copy of the Auction 98 Procedures Announcement to Congress and the Government Accountability Office.

143. **Supplemental Regulatory Flexibility Analysis.** Consistent with the Regulatory Flexibility Act of 1980, as amended (RFA), as well as the Commission's obligations to small businesses under sections 309(j)(3)(B) and 309(j)(4)(D) of the Communications Act of 1934, as amended, the Auction 98 Request for Comment included an additional analysis to supplement the Commission's Initial and Final Regulatory Flexibility analyses completed in the underlying notices of proposed rulemaking and rulemaking orders, including the Broadcast First Report and Order and associated orders which are hereby incorporated by reference. The Commission sought written public comment on the proposals in the Auction 98 Request for Comment, including comment on the supplemental analysis. None of the filed comments directly responded to the supplemental analysis in the Auction 98 Request for Comment. This supplemental analysis conforms to the RFA.

144. **Need for, and Objectives of, the Proposed Competitive Bidding Procedures.** The Commission has established a framework of competitive bidding rules pursuant to which it has conducted auctions since the inception of the auction program in 1994 and will conduct Auction 98. The Commission has directed the Bureaus, under delegated authority, to promulgate the procedures, terms, and conditions of Commission auctions after seeking comment on a variety of auction-specific procedures prior to the start of each auction. The Auction 98 Procedures Announcement establishes the procedures and minimum opening bid amounts for the upcoming auction of certain FM broadcast construction permits. As stated in the Auction 98 Request for Comment, this process is intended to implement the Commission's duty under section 309(j)(3)(e)(i) of the Communications Act of 1934, as amended, to provide notice and adequate time for potential applicants, including small businesses, to comment on

some proposed auction procedures. The Bureaus received four comments, with none directly addressing the Supplemental Regulatory Flexibility Analysis (SRFA) in the Auction 98 Request for Comment. The objective of the Auction 98 Procedures Announcement is to provide an overview of, and guidance on compliance with, the procedures, terms, and conditions governing Auction 98 and the post-auction application and payment processes for all potential Auction 98 participants, including small businesses.

145. Under the procedures adopted to govern the conduct of Auction 98, each auction applicant must submit electronically through the FCC Auction System a complete, accurate and timely FCC Form 175, submit a timely and sufficient upfront payment, and use the FCC Auction System to place any bids. Auction 98 will be conducted using a simultaneous multiple-round auction format. Each bidder must place bids within bidding eligibility and activity requirements using minimum acceptable bid amounts and bid increments, and subject to bid removal procedures and a simultaneous stopping rule. In addition, any winning bidder that defaults or is disqualified after the auction must submit an additional default payment of 20 percent of the applicable bid under 47 CFR 1.2104(g)(2).

146. **Summary of Significant Issues Raised by Public Comments in Response to the SRFA.** There were no comments directly addressing the supplemental analysis in the Auction 98 Request for Comment, and thus specific alternative procedures were not raised for consideration by the Bureaus. Nonetheless, the Bureaus carefully considered the potential impact of the auction procedures proposed in the SRFA on all potential participants, including small entities.

147. **Description and Estimate of the Number of Small Entities to which Specified Auction 98 Procedures Will Apply.** The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by rules proposed in that rulemaking proceeding, if adopted. The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) is independently owned and operated;

(2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Moreover, the SBA has created a small business size standard of \$38.5 million or less in annual receipts for establishments primarily engaged in broadcasting aural programs. The size data provided by the SBA, however, does not enable the Bureaus to make a meaningful estimate of the number of small entities who may apply to participate in Auction 98.

148. The procedures, terms, and conditions governing Auction 98 in the Auction 98 Procedures Announcement will affect directly all applicants participating in Auction 98, including small businesses. The number of entities which may apply to participate in Auction 98 is unknown. However, the procedures, terms, and conditions described in this Public Notice will affect the same individuals and entities set forth in paragraphs 51 through 53 of the supplemental analysis undertaken in the Auction 98 Request for Comment. In that Request for Comment, the Bureaus estimated that the number of applicants for Auction 98 may range from approximately 175 to 260 based on the numbers of applicants who filed short-form applications to participate in previous auctions of FM radio station construction permits (exclusive of closed auctions). However, the Bureaus also recognized that the number of auction applicants in Auction 98 could vary significantly as an applicant's decision to participate at auction may be affected by factors outside of the Commission's knowledge or control.

149. The Bureaus are unable to accurately ascertain the estimated number of small businesses that will participate in the Auction 98 based on the participation in previous auctions because the information collected does not correlate to a bidding credit based on businesses size (as is the case in auctions of licenses for wireless services). However, recent estimates by the Bureaus are instructive. The Bureaus recently estimated that 97 percent of radio broadcasters met the SBA's prior definition of small business concern, based on annual revenues of \$7 million. Moreover, the SBA has since increased that revenue threshold to \$38.5 million. Based on this assessment, the Bureaus conclude that nearly all of Auction 98 applicants will likely meet the SBA's definition of a small business concern.

150. **Description of Projected Reporting, Recordkeeping, and Other Compliance**

**Requirements.** The Bureaus do not propose to implement any new reporting requirements, recordkeeping requirements or any other compliance requirements in this proceeding. Any individual or entity seeking to participate in an auction must submit electronically a short-form application (FCC Form 175). Additionally, if an applicant applies for a New Entrant Bidding Credit, the Commission uses information collected on its FCC Form 175 to determine whether the applicant is eligible for the Bidding Credit. If an applicant is a winning bidder, it is required to submit a more detailed long-form application (such as an FCC Form 301 for an FM station), including any additional information to demonstrate its eligibility for any bidding credit it may have claimed.

151. **Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.** The RFA requires an agency to describe any significant alternatives beneficial to small entities considered in reaching a proposed approach, which may include the following four alternatives (among others): (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification for small entities of compliance and reporting requirements; (3) use of performance, rather than design, standards; and (4) an exemption for small entities.

152. In the Auction 98 Procedures Announcement, the Bureaus describe the procedures, terms, and conditions governing Auction 98 and the post-auction process, which are summarized above in this supplemental analysis. Throughout the auction process the Bureaus remain mindful of the Commission's statutory obligations to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services. The statute also directs the Commission to promote economic opportunity and competition by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses.

153. Since the inception of the auction program in 1994, the Bureaus have taken steps to

minimize the administrative burdens for applicants throughout the auction process while providing small businesses with the opportunity to participate in the provisioning of spectrum-based services. In Auction 98, these steps include, but are not limited to: (1) administration of a two-phase application process to minimize reporting and compliance requirements as well as to expedite the auction process, which in turn minimizes administrative costs for all applicants, including small businesses; (2) establishment of an Auctions website, CDBS, and other online resources containing guidance for prospective applicants available at no charge for auction applicants to conduct research concerning construction permits, auction mechanics, and Commission decisions and regulations; (3) operation of a web-based, interactive online tutorial and a mock auction online at no charge to facilitate applicant familiarization of the auction software and procedures; (4) conduct of bidding for Auction 98 electronically over the Internet, including online availability of round results and auction announcements; (5) availability of Commission staff to answer technical, legal, and other auction-related questions; and (6) a procedure for expedited return of an applicant's upfront payment by providing an online capability to request a refund before the close of the auction.

154. The Bureaus also notes that most of the Auction 98 rules would apply to all entities that choose to participate in FM broadcast auctions. However, based on the Bureaus' experience, applying the same rules equally in this context provides consistency and predictability to the auction process, and minimizes administrative burdens for all auction participants, including small businesses. For instance, the Bureaus will issue several further public notices prior to and after Auction 98 that seek to, among other things, clarify short-form application requirements and to clearly articulate the applicable procedures, Commission rules, and Federal statutes, in order to facilitate compliance by all applicants, including small businesses.

155. The Auction 98 process is designed to support the participation of small businesses. For instance, the Bureaus will publish public notices at key points of the auction process to keep applicants informed of auctions requirements and relevant deadlines. The Auction 98 Procedures Announcement



provides detailed guidance on how a small business can participate at auction and to ensure compliance with the Commission's competitive bidding rules. After the short-form application filing deadline, the Bureaus will inform applicants as to whether their short-form applications are complete, timely, and accurate, and will provide applicants with an opportunity to correct minor application deficiencies. About two weeks prior to the beginning of bidding in Auction 98, the Bureaus will announce the identities of those applicants that are qualified to bid in Auction 98. The timeline from the announcement of Auction 98 to the execution of Auction 98, including the publication of public notices, is designed to lower costs and burdens of compliance with the Commission's competitive bidding rules for all applicants, including small businesses.

156. Auction 98 will offer a New Entrant Bidding Credit for qualified entities, many of which may be small businesses. The New Entrant Bidding Credit provides a qualifying new entrant with a percentage discount on auction winning bids and is designed to promote new entrant participation in the auction and the provision of FM broadcast service. Although the New Entrant Bidding Credit does not specifically target small businesses the Bureaus estimate that the majority of Auction 98 applicants will be small businesses.

157. Once Auction 98 bidding has closed, the Bureaus will continue to provide information and services to auction applicants to facilitate compliance with their competitive bidding and media rules in the form of an additional public notice and continued support by Commission staff. At the conclusion of Auction 98, the Bureaus will release a public notice declaring the auction closed, identifying winning bidders, and establishing deadlines for submitting down payments, final payments and long-form applications, as well as posting on the Auction web site the auction results which will include the auction's winning bidders and winning bid amounts. In summary, a number of procedures which will be implemented in Auction 98 facilitate auction participation by all interested prospective FM applicants, including small entities.

158. **Federal Rules that May Duplicate, Overlap, or Conflict with the Procedures for**

**which Comment was Solicited in the Auction 98 Request for Comment.** None. These procedures for the conduct of Auction 98 constitute more specific implementation of the competitive bidding rules contemplated by Parts 1 and 73 of the Commission's rules and the foregoing orders, including the Broadcast First Report and Order and associated orders, and are fully consistent therewith.

159. **Notice to Small Business Administration.** The Bureaus will send a copy of the Auction 98 Procedures Announcement, including this supplemental analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A summary of the Auction 98 Procedures Announcement, including this supplemental analysis, will also be published in the Federal Register.

Federal Communications Commission.

**Gary D. Michaels,**

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